



A GUIDELINE FOR
THE PREPARATION OF
PROVINCIAL OFFICERS REPORTS
AND CONTROL ORDERS, WITH
EMPHASIS ON THE PULP AND PAPER
INDUSTRY IN ONTARIO

January 1984

TS
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Ontario

Ministry
of the
Environment

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INTRODUCTION

During the period 1972-1983 the Ministry of the Environment has increasingly used legal orders and prosecutions to implement abatement policy.

The legal means available to formalize an abatement program is by the authority of the Environmental Protection Act (E.P.A) or the Ontario Water Resources Act (O.W.R.A.).

Under the Environmental Protection Act a polluter may face the following:

<u>Type of Legal Means</u>	<u>E.P.A. Section(s)</u>
- Control Order	- S6, 113, 115, 122, 126, 143, 149
- Stop Order	- S7, 117, 118, 122
- Program Approval	- S9, 10, 11
- Minister's Order	- S16, 143
- Director Contingency Order	- S17
- Part V, Removal Order (Waste)	- S41, 41(2)
- Part V, Upgrading Order (Waste)	- S42, 43
- Provincial Officer Requirement	- S127
- Injunction	- S144

Similarly, a discharge into water may be legally controlled under the Ontario Water Resources Act by the following legal means:

<u>Type of Legal Means</u>	<u>O.W.R.A. Section(s)</u>
- Prohibition Order	- S17
- Director's Contingency Order	- S18
- Sewage Works Repair Order	- S32
- Requirement & Direction Order	- S51
- Injunctions	- S56, S15
- Emergency Stop Orders	- S62

It is noteworthy that the most common and the most effective legal method presently employed to achieve abatement in the pulp and paper sector is the Control Order (E.P.A., S6, S113).

These guidelines are the Ministry's recommended approaches in preparing and developing Provincial Officer's Reports and Control Orders.

CONTROL ORDERS AND AMENDING CONTROL ORDERS

The use of Control Orders has been the Ministry's most effective tool in achieving abatement in the pulp and paper industry.

Statutory Authority

A Director of the Ministry of the Environment "may" issue a Control Order by authority of Section 6 of the Act.

S6 Control Orders	"When the report of a provincial officer, filed as provided by section 126, contains a finding that a contaminant added to, emitted, or discharged into any part of the natural environment by any person or from any source of contaminant exceeds the maximum permissible amount, concentration or level prescribed by the regulations, or contravenes Section 13 or is a contaminant the use of which is prohibited by the regulations, the Director may issue a control order directed to the person responsible therefore. (emphasis added)
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From Section 6 we note that a "provincial officer" must file a report as provided by Section 126 of the Act. This is commonly known as a "Section 126 Report" or a "Provincial Officer's Report".

The report must contain a finding (or findings) that a "contaminant" as defined by Section 1(c) of the Act, is being discharged or emitted. Further, the finding(s) must indicate that such emission(s) contravene(s) a regulation or Section 13 of the Act.

By an amendment to the Act* the definition of "contaminant" has expanded. A contaminant now includes materials that may;

* See Bill 52, An Act to Amend the Environmental Protection Act; Section 1(c)(vi), 1(c)(vii), 1(ca) and Section 13(g), 13(h), Proclaimed January 1, 1984.

"cause loss of enjoyment of normal use of property, or, "interfere with the normal conduct of business". Additionally, the definition of "discharge" has been amended (see Section 1(1)(ca)).

The importance of a properly prepared and presented Provincial Officers' Report cannot be overstated. In order to come clearly within the authority of Section 6 the report must find a contravention of the Act to legitimize the Director issuing a Control Order.

S126 - (1) "A provincial officer may survey
Survey from time to time anything that
by he has reason to believe is or
Provincial may be a source of contaminant,
Officer and after such survey shall
report his findings and his
recommendations.

(2) "The provincial officer shall
file his report of his findings
and recommendations with the
Ministry and shall serve upon the
person responsible for the source
of the contaminant a copy
thereof." (emphasis added)

A copy of the Provincial Officers' Report must be served upon the "person responsible" *(Section 1(m)) for the source of contaminant. The report must include findings and recommendations relating to the contaminant. A copy of the Provincial Officers' Report is usually served upon the person responsible at the same time the polluter is notified of the Director's intention to issue a Control Order. The person to whom a Control Order, or Amending Control Order, is to be directed must be given Notice of the Director's intention to do so. (Section 116) The Director may not proceed to issue the order until after 15 days have passed. During this period the person receiving the Notice may make submissions to the Director relating to the prospective order.

* "person responsible", means the owner, or the person in occupation or having charge, management or control of a source of contaminant (Section 1(m), E.P.A.)

While Sections 6 and 126 indicate the authority allowing the Control Order and the filing of a Provincial Officers' Report the direction as to what can be ordered in a Control Order is contained in Section 113 of the Act.

S113 "The Director may, where he is authorized Powers by this Act to issue an order known as a of the "control order", order the person to whom Director it is directed to do any one or more of the following, namely,

1. (a) to limit or control the rate of addition, emission or discharge of the contaminant into the natural environment in accordance with the directions set out in the order;
- (b) to stop the addition, emission or discharge of the contaminant into the natural environment,
 - (i) permanently,
 - (ii) for a specified period, or
 - (iii) in the circumstances set out in the order;
- (c) to comply with any directions set out in the order relating to the manner in which the contaminant may be added, emitted or discharged into the natural environment;
- (d) to comply with any directions set out in the order relating to the procedures to be followed in the control or elimination of the addition, emission or discharge of the contaminant into the natural environment;
- (e) to install, replace or alter any equipment or thing designed to control or eliminate the addition, emission or discharge of the contaminant into the natural environment." R.S.O. 1980, c. 141, s. (emphasis added)
- *(f) to monitor and record both in the manner specified in the order, the discharge into the natural

* Section 113(f), (g), (h) and have been added pursuant to Bill 52. An Act to Amend the Environmental Protection Act. Proclaimed in force January 1, 1984.

environment of the contaminant specified in the order and to report thereon to the Director;

- *(g) to study and to report to the Director upon,
 - (i) measures to control the discharge into the natural environment of the contaminant specified in the order,
 - (ii) the effects of the discharge into the natural environment of the contaminant specified in the order,
 - (iii) the natural environment into which the contaminant specified in the order is being or is likely to be discharged; and
- *(h) to report to the Director in respect of fuel, materials and methods of production used and intended to be used, and the wastes that will or are likely to be generated.

2. A person required under subsection (1) to study and to report to the Director on a matter shall report to the Director in the manner, at the times and with the information specified by the Director in the order.

*Section 149 has been added to the Environmental Protection Act (January 1, 1984). This section allows the Director to require procedural or intermediate steps to be taken in an Order. This includes making applications to obtain Certificate(s) of Approval or other such procedural devices.

The powers of the Director are limited to requiring only those things provided for in Section 113. The Provincial Officers' Report recommendations must remain within these limitations. Staff preparing recommendations are advised to carefully consider whether the requirements being recommended fall within the bounds of the Director's powers as defined in

Section 113. A further suggestion is that the findings deal with contaminant discharges in the same sequence in the report as they appear in the Control Order. This format assists the reader in referencing findings to requirements of the order.

Fifteen days following the service of a Notice pursuant to Section 116 a Control Order may be served. The order is served upon the person responsible for the emission. The person responsible has 15 days in which to request an appeal.

Under recent amendments to the Act, a Control Order become in force upon the date specified in the order, unless, within 15 days Notice requiring a hearing is made (Section 114 and Section 122(1),(2)).

It is also important to note that a recent amendment to the Act clarifies that the Director's refusal to amend, issue, vary or revoke an order is not an order in itself. This means that refusals to amend orders are not appealable (Reference: Anchor Cap case; Section 122(c)).

An additional recent change to the appeal provisions of the Act are contained in Section 122a. An applicant requiring a Hearing must declare which portions of the order are being appealed and must state his grounds.

The ability to appeal an order and the limitations of making an appeal are contained in Section 122 of the Act:

S122 (1) "A person to whom an order of the
Appeal Director is directed may by written
of an notice served upon the Director and
Order the Board within fifteen days after
service upon him of a copy of the
order require a hearing by the Board."

*S122 (2) The commencement of a proceeding before the Board does not operate as a stay of a stop order or of an order to monitor, record and report that is a control order or a part of a control order.

*S122 (3) No failure or refusal to issue, amend, vary or revoke an order is an order.

*S122a.(1) An applicant for a hearing by the Board shall state in the notice requiring the hearing.

(a) the portions of the order, direction, term, condition, suspension, revocation or licence or other form of permission in respect of which the hearing is required; and

(b) the grounds on which the applicant for the hearing intends to rely at the hearing.

(2) Except with leave of the Board, at a hearing by the Board an applicant is not entitled to appeal a portion of the order, direction, term, condition, suspension, revocation or licence or other form of permission or to rely on a ground, that is not stated in the applicant's notice requiring the hearing.

(3) The Board may grant the leave referred to in subsection (2) where the Board is of the opinion that to do so is proper in the circumstances, and the Board may give such directions as the Board considers proper consequent upon the granting of the leave.

S122b.(1) Upon application with notice by the Director, a court or other appellate tribunal before which an appeal has been commenced under this Act, in the circumstances mentioned in subsection (2), by order may remove a stay of a matter of appeal.

* Section 122(2), (3) and Section 122a are pursuant to Bill 52, An Act to Amend the Environmental Protection Act. Proclaimed January 1, 1984.

S122b.(2) A court or other appellate tribunal may make an order under this section where the court or other appellate tribunal is satisfied that the order is necessary or advisable to prevent or to reduce a hazard to the health or safety of any person or to prevent or to reduce impairment of the natural environment for any use that can be made of it.

The authority of the Director to amend, alter or revoke a Control Order is contained in Section 115 of the Act. An Amending Control Order is considered a new order and must be treated with the same Notice and appeal provisions as detailed above.

S115
Further
Order "The Director may, by a further order, amend, vary or revoke a control order made under this Act and in each case shall cause a copy of the order to be served on the person to whom the order so amended, replaced or revoked was directed." (emphasis added)

It must be noted that the purchase of an operation that has a Control Order in place does not effect the order. The successor's or purchaser's responsibilities to meet the order are transferred by virtue of Section 18(1) of the Act.

Administrative Considerations

Apart from the technical considerations involved in preparing a Control Order, staff must be aware of the administrative aspects of developing such a document.

The accompanying schematic diagram illustrates this administrative process; Figure 1.

From the beginning of the development process to the issuance of a major Control Order may take several months. At each step in the process staff must expect advice and direction from senior staff relating to the Control Order proposed.

An important part of the development of Control Orders is public participation. Ministry policy states that the Regional Director is expected to consult with local citizens and interest groups (Policy #05-02-07, Section 1.9). Ministry staff are responsible for arranging these public meetings within the community that the mill is situated. A transcribed record of the proceedings should be prepared. The polluter should, whenever possible, actively participate in these public meetings. Participation by the polluter shall be expected when the polluter is requesting a change in a Control Order.

Submissions from the public and from interest groups should carefully be considered by the Director prior to proceeding with a decision to issue an Order. Ministry policy indicates that a 30 day waiting period is required between a public meeting and the issuance of a Control Order or Amending Control Order (Policy #05-02-08, Section 1.10).

A procedure exists within the Ministry of the Environment regarding authorization to issue a Control Order. Each request to issue a Control Order, or an amendment, must be approved by the Regional Director, Legal Services Branch, the Assistant Deputy Minister (Regional Operations Division), the Deputy Minister, and the Minister of the Environment. A briefing document should accompany an "Authorization to Proceed with Abatement Program" form (Copy attached,

Appendix 1). The briefing document should be short and concise and explain the objectives of the proposed program and the justification for issuing a Control Order.

When staff serve a Notice, a Control Order, or an Amending Control Order a few procedures ought to be considered. Any significant legal document should be served upon an officer of the corporation. This is the President, Secretary or Treasurer of the corporation. The identity and addresses of the officers of a corporation may be obtained by acquiring the "Corporate Return" for the company which is filed with the Ministry of Consumer and Commercial Relations. These documents may be obtained by contacting Legal Services Branch or the appropriate regional staff member involved with coordinating legal activities. Where a Control Order is served upon a person who is not an officer of the corporation a true copy of the original document should be sent to an officer by registered mail, along with a mail receipt return card. Details of suggested service procedures that should be followed can be found in Appendix 2 and 3.

When a Notice, Control Order or Amending Control Order is served staff are responsible to ensure that these documents are signed and dated by the Director. It is essential to ensure that all attachments, schedules, and appendices are included.

It is general practice to serve a "True Copy" of the document upon the corporation. The serving officer then swears before a Commissioner for Oaths an "Affidavit of Service" (also known as "Acknowledgment of Service"), (copy attached, Appendix 2). Commissioner's for Oaths are often located in MOE offices, Registry offices, at MNR or MOL offices, and include any lawyer. Each MOE office should consider arranging to have a Commissioner for Oaths designated for their office.

The original legal document, with the sworn "Affidavit of Service" is then appropriately filed in the Ministry records. Usually original legal documents are filed at the office where the Director making the order is located. In addition, a copy of the documents must be forwarded to the Assistant Deputy Minister's Office, (Regional Operations Division), to be included in an alphabetical index as required by Sections 18(2)(3)(4) of the Act.

PREPARATION OF PROVINCIAL OFFICERS REPORT

Objectives of Report

The objectives of any Provincial Officer's Report should be to clearly describe investigations that have been conducted into the discharges of contaminants into the environment. When a Provincial Officer intends to use his report as a rationale document for a Control Order the contents of the report become more important than routine reports.

The report must be made by the Provincial Officer and only upon the reasonable belief that a contaminant is being or may be discharged to the natural environment.

Since the report may be made only when a "contaminant" is involved a clear and concise declaration of the contaminants of concern must be made.

The most important aspect of a Provincial Officers report is that it must contain "his findings and his recommendations". Recommendations must directly relate to the findings of the officer. The findings must state that a Regulation or that Section 13, as amended, of the Act is being contravened. Such a declaration then allows the Director the authority to issue a Control Order (S6, EPA).

A recommended preamble to meet the above noted objectives may be as follows:

"This is the report of John Doe, a Provincial Officer, made under the Environmental Protection Act, following a survey of (identify industry)."

Preparation of Draft Report

Many times field personnel will be thoroughly aware of a local pollution problem related to a pulp and paper mill. In terms of preparing an enforcement document the staff member must prepare evidence to support his personal belief. This is done by conducting various investigations performed by a particular field person or others and by carefully listing the findings in a draft report.

Field staff should avail themselves of any available information that will confirm their beliefs. A draft Provincial Officers' Report is often prepared as a basis of discussion between senior Ministry officials and the polluter. Such information may come from company submitted reports. Another source may be sample results from monitoring programs carried out by the Ministry or other agencies. Data may also be available from ambient air monitoring networks or from water quality assessment monitoring programs. Each of the available sources of information should be reviewed prior to the Provincial Officer preparing his report.

In order to demonstrate a clear understanding of the problems being investigated the officer should carefully describe the mill. It is useful to describe the type of operation, the products that are made, and their production rate. The local setting of the operation is important as well. A draft report should describe the location of the mill with regards to the community. The ways in which the contaminants of concern impact upon the community should be described.

An important aspect of consideration is the reaction of the public to the discharges. If files exist that detail substantiated complaints lodged by citizens these should be contained in the documentation.

The draft report must describe what the contaminants of concern are. Further, it must indicate the source or sources of these contaminants and describe the means by which they are discharged into the natural environment.

The Provincial Officer must then assess if the investigations support his beliefs that the Act or Regulations are being contravened. Regardless of whether his findings are to the affirmative or not a report declared to be conducted under Section 126 must be filed with the Ministry and a copy with the person responsible for the contaminant.

Should the conclusions formulated from investigations and surveys show contraventions of the legislation the officer must state his findings and recommendations to the Director as to how to proceed.

In summary, and in order of their importance, in the preparation of a draft Provincial Officers report the following matters must be addressed:

- Findings of a Provincial Officer
- Recommendations of a Provincial Officer
- Description of the Operation
- Description of the Local Setting (watercourse, town, economic considerations etc.)
- Identification of Contaminants
- Sources of Contaminants
- Effects of Contaminants
- Supporting Information of Effects (surveys, complaints etc.)
- Signature of Provincial Officer
- Date prepared, date filed with Ministry

Discussions With the Polluter

The Control Order process is seldom a method of strictly imposing requirements upon a polluter. In most cases a period of discussion and negotiation occurs at which time the Ministry and the discharger formulate positions regarding the

upcoming Control Order. This phase of the process is an extremely important aspect. The Ministry gains from having the comments of the polluter. Often the concerns of the discharger are based upon their experience in the industry.

The economic impact of any proposed control measures usually becomes an integral part of these discussions. Whereas it is often difficult for the field staff of the Ministry to fully identify the economic impacts of a proposed program, it is at this stage of the process that the polluter will bring forward his position respecting the costs and benefits of the proposed program. These discussions allow the Provincial Officer and his superiors to assess the accuracy of the polluter's claims relating to economic considerations. In some circumstances the concerns of the polluter are justifiable, and the Ministry position is amended. In other cases, further investigations prove that the impacts suggested are not valid and that the program recommendations appear sound. Such investigations may be carried out by Ministry staff with the assistance of accounting and economic experts in some cases. Ministry policies #05-02 and 02-01-01, explicitly detail the need for and the means of rationalizing abatement costs; further reference may be made to Appendix 4.

Because of the important nature of such negotiations staff are wise to deal only with senior company officials. Similarly Ministry representation at such meetings should be by designation of the Director, and may include the Regional Director personally.

The position of the Ministry respecting the requirements of a Control Order should be in concert with Ministry policy and the current legislation. This position should be reinforced by reference to investigations and surveys that have lead to the development of Ministry views. Staff should insure that

recommended courses of action beyond the bounds of set policy are properly approved for discussion with the polluter, prior to such negotiations.

Careful records of the discussions of such meetings must be made. Provincial Officers are advised to formulate their views based upon these discussions thus allowing a fair and equitable program to be developed.

Final Preparation of Findings & Recommendations

Following an opportunity to discuss the preliminary Provincial Officers' Report with senior Ministry officials and with the polluter, a final report may be prepared.

Public participation is an integral part of the Ministry policy to use Control Orders to formalize abatement programs. The Provincial Officer's findings are clearly outlined at this phase of the procedure. These findings may be reviewed by the public and may be challenged throughout the public process.

The final preparation of the findings of the Provincial Officer are of paramount importance in the proper presentation of the program to the public and the polluter. Findings must be such that they clearly indicate contraventions of Section 13 of the Act, as amended, or the Regulations.

The recommendations of the Provincial Officer must be rationalized by his findings. The final report then is prepared in view of the position developed by the Ministry as a result of all previous investigations and discussions.

The recommendations of the Section 126 Report state that a Control Order should be issued. The report should clearly state the reasons why the order is being recommended. The strict legal formalities respecting orders do not apply to the Reasons. While an order should be treated as an industry specific requirement, with strict adherence to legal formalities, the Reasons are different, in that their purpose is to inform the company of what motivated the order, and to show the Ministry's justification for the order. Prepare the Reasons in such a way as to make it obvious to a layman that there is a serious problem that must be corrected. Strong, detailed Reasons can have a powerful impact on a Court or a Board. Do not underplay the Reasons. Further, it may be useful that the findings and recommendations are dealt with in the report in the same order as they will appear in the Control Order document.

The form of the final report will depend upon the problems the Control Order will address. A comprehensive program will likely require a detailed report, including supporting data to validate the findings and recommendations. These types of reports may require binding and printing for presentation purposes.

Simple programs will require a less comprehensive Provincial Officers Report and lesser clerical considerations.

Example Recitals

In order to assist Provincial Officers in the preparation of "Section 126 Reports" examples of various sections of a report are included below.

Examples of Findings of Air and Water Emissions

1. "Particulate matter and odorous emissions from (Company name and emission source) are discharged into the natural environment and have been found to cause material discomfort to persons residing adjacent to your facilities Section 13(1) of the Environmental Protection Act and Sections 6 and 8 of Regulation 308 made thereunder."
2. "Suspended solids in effluent discharged from (Company name and emission source) are discharged with the Main Sewer effluent entering the (name of receiving water). The suspended solids contaminate the sediments of the river and cause damage to plant and animal life in the river. These discharges violate Section 13(1) of the Environmental Protection Act."

Example of a Recommendation

1. "Based upon my findings it is hereby recommended that the Director issue a Control Order, directed to (Name of Polluter), dealing with the discharges of contaminants, namely (name of contaminants), from its manufacturing operation at (location of plant). Such a Control Order should include the following requirements: (list requirements as they will appear in Control Order)."

PREPARATION OF CONTROL ORDERS

The drafting of a Control Order or an Amending Control Order usually is done concurrently with the preparation of a "Section 126 Report". The findings of the Provincial Officers Report give the Director the authority to issue a Control Order. Without a Section 126 report a Control Order has no statutory authority. The Provincial Officers Report must go hand in hand with the Control Order itself.

Identify the Polluter

The correct identity of the person responsible is essential. If this person is a corporation acquire the "Articles of Incorporation" and the last "Corporate Return" from the Ministry of Consumer and Corporate Relations. These documents will provide the correct spelling of the name and the official corporate address of the company. Proper service of legal documents upon a corporation should be made upon the President, Secretary, or Treasurer of the company if possible (Appendix 2). It is essential that the exact spelling and style of the polluter's name that appears in their "Articles of Incorporation" be used. If a corporation is registered as A.B.C. Ltd. it is improper to identify them as A.B.C. Limited. The corporate address should appear on the document; with reference being made to the branch operation of concern.

Recitals and Defined Terms

The Control Order document begins with an introductory set of paragraphs commonly known as recitals. These paragraphs, in plain words, outline why the order is required and what the pollution problems are.

The use of clear concise wording cannot be stressed too strongly. Remember that a court or the Environmental Appeal Board may have to comprehend the meaning of a given section of an order sometime in the future. Write the order so there is no room for misunderstandings.

Defining terms within an order assists in its being understood. To ensure that all parties involved are certain about a given item it is advisable to define any terms that may become an issue. This is usually done as "Section 1" of the Order. A polluter may say later that he did not understand what was expected of him and ask to be sheltered by ambiguous wording. Staff should be aware that certain defined terms are contained in the Acts and Regulations. Wherever a term is to be used that exists in a statute the defined meaning should be given and used. It is wise to indicate in the first section of the Order that any defined terms are to mean the same as they do in the legislation.

The recitals of the Control Order should show that the prerequisites to the issuance of the Control Order set out in section 6 and section 116 of the Environmental Protection Act have been met. These prerequisites are:

- (1) the filing of the report of a Provincial Officer;
- (2) the report containing a finding that a contaminant discharged into the natural environment contravenes section 13 or exceeds the maximum permissible amount, concentration or level prescribed by the regulations;
- (3) identify the source of pollution and identify the polluter as the person responsible;
- (4) recite that the notice of intention, written reasons and a copy of the Provincial Officer's report upon which the reasons are based, was served;

- (5) refer to the receipt and consideration of any of the polluter's submissions or state that no submissions were received as applicable.

The following is an example of a recitals clause:

Sample Recitals Clause

The report of JOHN DOE, Provincial Officer, made under section 126 of the Environmental Protection Act (called the "Act" in this Control Order) respecting the ARCTIC PAPER LIMITED located at Lot 4, Concession V, in the Township of Dryden in the District of Cedar Falls in the Province of Ontario (called the "mill" in this Control Order) was filed with the Ministry on June 1, 1983. The report contains findings that contaminants discharged by you from this mill into the natural environment contravene section 13 of the Act. You are the owner and operator of this mill and, therefore, are the person responsible within the meaning of the Act for the discharge of contaminants from this mill into the natural environment.

Notice of my intention to issue this Control Order, written reasons therefore, and a copy of the report of JOHN DOE, Provincial Officer, made under section 126 of the Act upon which the reasons are based, were served upon you on July 5, 1983. Written submissions were received from you on July 10, 1983 which I have duly considered and taken into account in issuing this Control Order.

Therefore, pursuant to the authority vested in me by section 6 of the Environmental Protection Act, I hereby order you to do the following:

Section 1 (a): In this Control Order the interpretation of all terms shall be the same as those contained in the Act and the Regulations made thereupon, unless otherwise specified.

Section 1 (b): "AVERAGE LOADING" means the mass of a given parameter, expressed in megagrams, divided by the number of operating days during that period.

Section 1 (c): "OPERATING DAY" means any 24 hour period during which newsprint, pulp, or tissue product is produced commencing at 8:00 a.m. on a given day and ending at 8:00a.m. on the following calendar day.

Section 1 (d): "MEGAGRAM" means a metric ton, (known as tonne) and being 2205 pounds.

It should be noted that in preparing a Control Order it is wise to use the same term to refer to the same thing throughout the Order, Notice, Reasons, Provincial Officer's Report, and any amending Orders. Decide at the first document stage on the terms you prefer, and continue with them.

Example:

Do not refer to a lagoon interchangeably as a wastewater pond, wastewater storage pond, lagoon, and wastewater retention pond.

Do pick one term and use it throughout.

Matters Related to Control Order

It is wise to clearly specify what contaminants are dealt with by the Control Order. Also, it is useful to concisely identify what the sources of these contaminants are and how they discharge into the natural environment.

By stating clearly what sources and contaminants the order relates to there is less likelihood of protection from prosecution under Section 146(2), should the discharge of other contaminants warrant legal action.

Example:

"This Control Order applies only to the contaminants known as 5 day biochemical oxygen demanding substances, dissolved solids, toxicity and suspended solids and only to normal discharges to the (Receiving water) by means of the sewer commonly known as the Main Mill Sewer, at your mill in (Location)."

Numbering of Sections

In preparing Control Orders each item that is to be dealt with constitutes a separate "section." Sections of orders subdivide into "subsections" which in turn divide into "clause" and "subclause" respectively. When referring to a certain section or clause the correct subdivision should be noted.

Instead of merely numbering the various things required to be done by the order, it is wise to write out the word "Section" before the number, if there are several cross-references.

Example:

Do This: Section 6. By June 10, 1984, to reduce lead emissions from the turbo-encabulator to 25 parts per million.

Not This: 6. By June 10, 1984, to reduce lead emissions from the turbo-encabulator to 25 parts per million.

An example of the subdivision of clauses is as follows:

<u>Reference</u>	<u>Format</u>
(Section 11) (Subsection 3) (Clause a)	Section 11(3) - By November 30, 1984, (a) to install on the turbo-encabulator in the whale oil reduction chamber a scrubber which
(Subclause i)	(i) has a capacity of 25 ergs per minute;
(Subclause ii)	(ii) is designed to remove 90 percent of suspended polonium prior to discharge to the atmosphere; and
(Subclause iii)	(iii) is equipped with an ultrasonic alarm.

Wording of Control Order Sections

In preparing sections of orders the use of abbreviations is to be avoided. If however a term is used many times throughout the document this rule can be broken by defining the abbreviated item when it first appears, eg. parts per million (p.p.m.).

It is not useful to use the term "and/or" in a legal document. These words have specifically different meanings and must be used separately.

Example:

Do not say "Install a fan and/or scrubber";

Do say "Install a fan or a scrubber, or both".

When referring to Provincial Acts administered by the Ministry it is proper to quote them as the "Environmental Protection Act" or the "Ontario Water Resources Act." It is improper to capitalize the word "the" before the title of the Act. It is not necessary to add "R.S.O. 1980" following the title of the Act referred to.

Regulations that are specified in orders should reference the Act they are made under. Regulations are referred to as "Ontario Regulation (number) under the (name of Act) Act."

Example:

Ontario Regulation 308 under the
Environmental Protection Act;

Ontario Regulation 11/82 under the
Environmental Protection Act..

When requiring a company or person to make submissions to the Ministry specify the person to whom the submissions are to be directed. The responsible Ministry official should be described in terms of title, section, and location. In deciding who this staff person should be, you should have regard to the effective administration of the information received. The staff person named should be the person who will have to come to court and testify if the requirement is not complied with. The only exception to the above is when the Act requires that the Director be involved; e.g., Approvals matters.

Example:

You want monthly progress reports on the development of a landfill site, which would be monitored by the District Office;

Do not say "By the 1st day of each calendar month, submit a progress report to the Ministry";

Do say "By the 1st day of each calendar month, submit a progress report to the District Officer, Municipal and Private Abatement Section, Ministry of the Environment, 35 Main Street, Smithville, Ontario".

Whenever feasible, set a specific date for compliance, as Ministry now does for most measures ordered.

There are situations where this is not feasible such as where you want to allow the company a short compliance period (e.g., 30 days), but you do not know when the Ministry's paperwork on the order will be completed. The wording recommended will tie the compliance to the issuance date of the order.

Example:

"Within 30 (thirty) days after the date this Order is issued . . ."

In unusual situations where you expect some difficulty or delay in serving the Order on the company, tie in the compliance date to the date of service of the Order.

Example:

"Within 30 (thirty) days after the date you are served with this Order . . ."

The purpose of using this wording is to make it clear exactly when the Order must be complied with without having to refer to the Act or to have a lawyer do legal time calculations.

When referring to Ministry requirements or guidelines (except an Act or Regulation) you should attach the relevant requirements or guidelines. You cannot simply order measures that meet Ministry criteria without detailing what those criteria are.

Example:

Do not say "Construct a lagoon that meets Ministry guidelines . . ."

Do say "Construct a lagoon in accordance with the "Ministry of the Environment Guidelines For Lagoon Construction", a copy of which is attached to this Order . . ."

Aside from cases where the Act requires an approval, do not word a provision in an order which requires a company to install something or do something "acceptable" or "satisfactory". Never leave the matter at that unless you are confident the company will cooperate. Whenever possible, set out the criteria that must be met, which can include reference to technical standards or published material. An example might be

Do not say "analyse for BOD₅ in an acceptable manner".

Do say "analyse for BOD₅ in accordance with the methods outlined in Standard Methods, for the "Examination of Water and Wastewaters, 13th Edition", of which a copy of the part respecting the BOD₅ method is appended".

A second alternative to the above is to give the company the option of taking prescribed measures which the Ministry knows will work (but which the company is reluctant to undertake) or of other measures proposed by the company which the Director approves. This forces the company to do everything it can to get the Director to accept a preferred alternative.

Amending Control Orders

Section 115 of the Act allows the Director to revoke, alter and amend a Control Order. Where substantial changes are being made to a Control Order and where staff firmly believe that the polluter is unlikely to appeal the Order, it is not unreasonable to revoke the original order completely and replace it with an entirely new Amending Control Order. This procedure offers some hazards however.

If the original order is revoked and an Amending Control Order issued the polluter has the right to appeal the entire new order. A better approach is to amend only the pertinent section of the order and not the entire document.

A problem in the past has developed when many amendments to a specific order occurred. Staff have commented that it became difficult to rationalize which amendments dealt with specific issues in the order. These problems indeed are of practical importance.

To overcome the difficulties of having many amending orders flowing out of an original order a "consolidation" approach is suggested. Similar to the means by which Acts and Regulations are amended it is suggested that staff adopt the following means of amending orders.

Each Order should be given a number when issued, counting the original order as the first document,

Example

- "Control Order"
- "Amending Control Order, #1"
- "Amending Control Order, #2"

The Amending Control Order issued should be only for the item changed, and should not replace the entire previous order. The brief Amending Control Order would only replace specific clauses, and not affect the appeal exposure of the rest of the order.

In order that staff have only one document to work with an office consolidation copy can be prepared. Similar to published copies of legislation the office consolidations of the up-to-date order would not be the official Amending Control Order. The official and original amendment would be duly filed in the same manner as other orders. A statement of the "unofficial" status of the office consolidation should preface the working document of the Amending Order.

Example:

OFFICE CONSOLIDATION
Amending Control Order - #2

"This edition is prepared for the purposes of convenience only, and for an accurate reference to this Order recourse should be had to the original documents on file with the Ministry of the Environment."

Another advantage of using an office consolidation approach in amending orders is the use of marginal notes to advise staff of key developments. When additions, amendments and revocations of sections occur these changes can be placed in a marginal note. In this way an updated office consolidation acts as a chronological record of actions without having to check the files directly.

Examples of how an office consolidated amendment would appear are contained in Appendix 5. It should also be noted that existing orders could be "unofficially" consolidated for ease of handling by staff.

Compliance Dates

Wherever possible state the exact date by which the Director expects the requirement of the Control Order to be completed. Wording such as "within 90 days following such and such" is less concise than "On or before May 7, 1987". If reports or data are to be submitted on a given schedule attempt to set out those dates (ie. "Jan. 15, Mar. 15, June 15, Sept. 15, 1983 and on or before those dates every year thereafter.")

Examples:

1. "On or before January 31, 1983 and on or before January 31 of each and every year thereafter, submit to the Director (add requirement)"
2. "File with the Director, (your Region):
 - (a) within 45 days of the end of each calendar quarter (May 15, August 14, November 14, February 14) a written summary of....with supporting data, sufficient to enable verification of emissions."

Term and Expiry Date

Control Orders become enforceable at the time specified in the order, unless an appeal is required. Orders may set out that the order takes force upon service to the person responsible, or at a later date, as necessary.

Since specific Ontario Regulations do not exist to specify limits of discharges into water the Control Order is the common regulatory instrument. In order to have these discharge limits remain in force for an indefinite period an Order clause may be drafted to set on-going limits. Items of an indefinite limiting nature, such as the level of BOD₅ discharge that is allowable, can be set until changed by the Director. Such wording as "Sections 3, 5 and 7 shall remain in force until amended or revoked by further order"; achieve this purpose.

It is also considered useful to specify the last date that items of a "non-limiting" nature expire. (Non-limiting in the sense of not setting discharge allowances). By noting an expiry date the draftsman ensures the end of protection from prosecution for matters associated with the order.

A practice that has developed when setting end dates for orders is to set the expiry date to be two months after the final date set out in the Control Order.

Example:

"Sections 2(e), 3, 4, 24 and 25 of this Control Order shall be in force until such time as they are amended or revoked by the Director. All other requirements of this Control Order shall terminate on December 31, 1984."

Discharge Limits

Whenever possible staff should recommend discharge levels only upon the basis of defensible rationale. The use of assimilative capacity studies for watercourses receiving pulp mill wastes is an example of developing such reasoned discharge limits. Use of water quality objectives, the Federal Pulp and Paper Regulations, or Regulation 308 (air regulation) are further examples of reasonable sources of rationale.

Arbitrary discharge level setting must be used cautiously since staff may be faced with defending their rationale before an Environmental Appeal Board hearing or before the public in an open forum.

When specifying an acceptable discharge level state the limit clearly. Indicate a specific mass per unit time (ie. tonne/day) level whenever possible. Limits set by requiring a per cent reduction are less effective. To determine compliance for "per cent reduction" clauses the investigator must prove what the discharge level was prior to the abatement as well as at the time of concern; this is often difficult to do.

As discussed previously, do not presume that your understanding of a "tonne" or a "day" is the same as the polluter. If it may be a point of contention define these terms to prevent misunderstandings.

Examples

Section 1. "Ensure that the loading of BOD₅ in the total mill effluent does not exceed 15 tonnes per day."

Section 2. "Operate your mill from the effective date of this Control Order such that the discharge of total suspended solids contained in (Name of Sources ie. Main Sewer) does not exceed:

- (a)
 - i) 2.90 tonnes per operating day averaged over any 30 consecutive operating days, or
 - ii) 3.3 tonnes on any day, or
 - iii) 500 milligrams per litre at any time in any of the spent pulping liquor, the clean water sewer and the floatation clarifier effluent.

Strikes, Lockouts, Unforeseen Hinderances

Many Control Orders span a period of six to eight years. It is impossible for the person drafting the document to foresee all of the possible problems that may cause compliance dates to be missed. At times these difficulties may be beyond the control of the polluter.

It is suggested that Control Orders provide a clause which allows the Director to make minor changes to the document when valid reasons are properly documented.

Such difficulties as strikes, lockouts, industrial disturbances, accidents to the plant facilities are examples of problems for which the polluter may require an extension in time. Another common problem is an inability of a polluter to comply because of an equipment supplier being unable to meet an order date.

A clause may be placed in a Control Order to allow the Director to receive information from the polluter with respect to a compliance date which is likely to be missed. The usual practice is to make provision to allow the polluter "a reasonable time" in an order extension for unavoidable delays (such as strikes etc.).

Example:

Section 10. "In the event of the Company being rendered unable to comply with any requirement herein because of:

- a) Natural phenomena of an exceptional, inevitable and irresistible character;
- b) Strikes, lockouts, or other industrial disturbances;
- c) Inability to obtain materials or equipment for reasons beyond the control of the Company; or
- d) The receipt of Ministry of the Environment approvals for construction when construction must be delayed due to weather, conditions,

the Company shall notify the Director immediately of any of the above occurrences, providing details that prove no alternatives are feasible in order to meet the compliance dates in question, and inform the Director when the Company expects to comply with the requirement, whereupon the Director will set out a new compliance date which the Company shall meet.

Reasonable Care

The Environmental Protection Act implies that all persons will take reasonable care to ensure that discharges into the natural environment do not violate the Regulations or the Act (Section 13). While complying with a Control Order the person named therein is immune to prosecution by authority of Section 146(2) of the Act.

It is suggested that Control Orders specify that the polluter must exercise reasonable care in all matters relating to its operations to minimize discharges of contaminants into the environment. In this way if discharges occur due to negligence or "lack of reasonable care", an action may be initiated. This type of clause thus ensures that the polluter must continue to make efforts to minimize discharges regardless of his compliance with a Control Order.

Example:

"During the course of this Control Order, the Company and its employees shall at all times exercise reasonable care in all matters relating to the operations of the mills to minimize discharges of contaminants into the natural environment."

Enforceability

Usually the contents of an order have been discussed and negotiated with the polluter. In this regard an order often assumes the role of a "quasi-contract" between the discharger and the Province.

As in any matter set out by law the terms of an order must be enforceable for it to have a meaningful purpose.

Upon the completion of a draft Control Order the responsible staff member should review each clause carefully. The terms of an order should be viewed with the practical problem of how the Ministry can confirm compliance. Further, the practical means by which non-compliance can be measured must also be considered.

An example may be as follows. If an order says that a discharge may be "10 tonnes/day based upon a 3 month average" then practical enforcement problems may occur. To determine whether a violation is occurring the staff member must wait 3 months for data. A further complication is that in this situation company data would be the only practical source of information. Obviously Ministry staff could not sample a discharge continually for such an extensive time period.

The Provincial Officer preparing the Control Order should ask the question "How do I show whether or not the polluter is complying"?

Several techniques have been used to allow staff to "police" orders. In general terms the use of "continuously running averages", limits that are "never to be exceeded", shortened "averaging periods", and "concentration equivalents" have been used.

The "continuous running average" technique sets the time period over which a discharge may be averaged. An example may be a BOD₅ discharge limit averaged "over any consecutive 30 operating days". In this case each day provides a new average. Thus the averaging period moves through a time scale by dropping the loading number for the previous day and adding the current days' loading to the calculation. The shorter the number of consecutive days for which the calculation covers the more stringent the requirement (ie. 7 consecutive days more stringent than 30 consecutive days).

In recent years spill control systems within pulp and paper mills have become commonplace. Whereas most allowable discharges are set over an average time period it is still possible for a polluter to have a major spill, and still meet the average allowable loading. In order to prevent shock loadings to the environment, which are usually caused by spills and by poor "housekeeping", a concept of a "never to exceed limit" may be considered. By setting a maximum permissible discharge limit, usually twice the allowable average limit, the polluter must prevent large spills from occurring.

A method that has developed to allow the staff member to positively determine compliance with a waterborne discharge limit is the concept of "concentration equivalent".

An allowable discharge limit when considered with respect to a given flow in a discharge pipe will translate to a set concentration of contaminant. Concentration equivalents are concentrations of a parameter that relate to the allowable limit at any flowrate. For purposes of preventing sloppiness and spills the use of a maximum concentration can be applied. The inspector merely determines the flowrate at the discharge

point, at the time a sample is taken. Usually a concentration equivalent twice the normal concentration is allowed. If the sample results report concentrations above this limit a violation has occurred.

Examples:

Section 1. "On or before (Compliance date), make the necessary changes and install the necessary facilities to ensure that the level of total suspended solids discharged to the (Receiving Water) from your mill does not exceed 10,000 kilograms per day averaged over an operating week."

Section 2. "Control the effluent discharged from your mill such that:

- i. the loading of Biochemical Oxygen Demanding Substances (BOD₅) in the total mill effluent does not exceed 30 tonnes per day, averaged over any 30 consecutive operating days.

Accuracy of Data

The pulp and paper sector has been submitting data in various forms to the Ministry since the 1960's.

It is essential that the Ministry continue to require the discharger to report effluent discharge information. This requirement should be stated in the body of the Section 126 Report and the Control Order.

Staff have determined that the requiring of this data in itself is not adequate. The polluter must also be required to show that the information provided is accurate.

Companies that perform laboratory analysis should submit complete test methodologies to the Director for approval of their use. These methods should be reviewed by competent Ministry laboratory personnel and their acceptability confirmed. A designated company official should be required to certify that each data submission is accurate. The expected accuracy of the data should be declared with the data submission.

An area of data collection that has often been overlooked is the proper collection of samples. The methods and equipment by which samples are acquired should be stated in the requirements of the Control Order. Complex sampling systems should be approved by the Director prior to their installation and operation.

Another area relating to the accuracy of data is the determination of flowrates. There is little point in having accurate analytical techniques to determine the concentration of a contaminant if the measurement of the "rate" of

discharge is incorrect. Flow measuring devices must be of "state of the art" design and functional standards. Whenever possible these devices should receive a Certificate of Approval as part of a "sewage system" or an alteration to an existing sewage system as per the Ontario Water Resources Act. The accuracy of the device should be known and declared by the polluter.

Calibrations of flow devices should be an on-going requirement of Control Orders. The methods used to check the accuracy of the flow measurement device should be approved by the Director. Monthly "mini-checks" of the flow measuring equipment should be made by the polluter. An annual "major-check" by a properly trained technician should be performed to confirm the stated accuracy of the system.

Examples

Section 1. (Analytical Methods)

"On or before (Compliance Date) submit for the approval of the Director, copies of the detailed analytical methods that will be employed by the Company for the determination of the concentrations of total suspended solids, phenols and 5 - day biochemical oxygen demanding substances contained in wastewaters discharged to the Puresprings River. Said methods shall include a statement on the inherent accuracy of each test method. No other variation of the method shall be substituted without prior approval from the Director."

Section 2. (Flow measurement)

- a) "On or before January 31, 1983 and on or before January 31 of each and every year thereafter, submit to the Director a report certifying the precision of all flow measuring devices, for the preceding calander year, which monitor direct discharges to the Puresprings River. Precision shall be determined by fluorometry, salt dilution or other similar method approved by the Director."
- b) "A thorough inspection of each flow measuring device and associated equipment shall be undertaken by the Company at least once per calander month to ensure proper functioning and a signed inspection log shall be maintained covering the latest two year period."

Acknowledgement of Compliance

An onus is placed upon Ministry staff to monitor the compliance of a polluter in meeting a Control Order. Staff should prepare schedules to assist them in ascertaining when compliance dates are about to come due.

As compliance dates come due District Office staff must ensure that the item has been dealt with properly. If non-compliance occurs this situation should be brought to the Regional Director's attention.

It is a good practice for Ministry staff to acknowledge completed items in a Control Order program. The Regional Director should send the polluter a letter indicating that he accepts a given item as completed. District staff should prepare such letters for the Director's signature only after insuring that the item in question has been properly disposed of.



Ministry
of the
Environment
Ontario

Authorization to Proceed with Abatement/Monitoring Program

APPENDIX 1

.....
Region

Owner

Location

Legal action is being considered under Section for:

Type of Legal Proceeding:

Comments:

Please indicate your approval by signing in the appropriate space below, and forward with all attachments to the next authorizing officer. Return after approvals have been completed to the Regional Director.

Regional Director

Date

A.D.M., Regional Op.

Date

Legal Counsel

Date

Deputy-Minister

Date

Minister

Date

APPENDIX 2

INSTRUCTIONS FOR PERSONAL SERVICE OF A MINISTRY ORDER OR A NOTICE OF ORDER

These instructions are for the guidance of Ministry staff who serve formal Notices or Orders.

1. Check to ensure that the Notice/Order is dated, that the Reasons are either included in the body of the Notice/Order or are attached on a separate page, and that any schedules or appendices referred to in the Notice/Order are attached.
2. Compare the original Notice/Order with the copy to be served to ensure they are identical.
3.
 - (a) A Notice/Order to be served on a Company should be served on the President, Secretary, Treasurer, or Manager.
 - (b) A Notice/Order to be served on an individual should be served on that person directly.
4. A copy of the Notice/Order should be handed to the person being served. The Notice/Order should not be in an envelope. As a general rule, proper service requires that a copy of the Notice/Order touch the body of the person being served.

5. Show the original Notice/Order to the person being served and give him the opportunity to compare it to his copy.
6. Try to get the "Acknowledgment of Delivery"* signed and dated. If asked explain he is merely acknowledging that he was served with the document.

While it is advisable to get the "Acknowledgment of Delivery" signed, it is not mandatory. Thus, if a person refuses to sign, simply note the fact and perhaps indicate to the person served that the Notice/Order is a legal Notice/Order which applies whether or not he signs.

7. Note the time, date and place of service, and where the Notice/Order is to a Company, the full name and official position of the person served.

These details may be written directly into the Affidavit of Service at this time, but you should not sign the Affidavit of Service until it is being sworn.

8. Complete the body of the Affidavit of Service but do not sign it yet.

If the Notice/Order is to a Company, the Affidavit of Service should be completed by inserting the proper name of the Company as the name of the party you served, and by inserting the name and position of the actual person with whom you left the document.

* Note: Also known as Affidavit of Services

Example:

..... I did serve Canco Steel Limited a true copy of this Notice/Order by leaving it with Michael John Pearson, its President.

9. Within the next few days, go to a Commissioner for Oaths to swear the Affidavit of Service. Every lawyer, Notary Public and Justice of the Peace, and many municipal officers and staff in other Ministries' offices are Commissioners for Oaths.
10. Sign the Affidavit of Service in the presence of the Commissioner for Oaths, who will also sign it. Ensure that either you or the Commissioner for Oaths have filled in the date and place of the swearing of the Affidavit of Service.
11. If possible, complete, sign, and have sworn a duplicate copy of the Affidavit of Service as set out above.
12. The Affidavit of Service should be firmly stapled or similarly attached to the Notice/Order before it is sworn, and not removed later.

N.B. Different procedures apply to service by registered mail.

ACKNOWLEDGEMENT OF DELIVERY

Delivery is hereby accepted of a true copy of this.....

Dated at.....

this.....day of

(SIGNATURE)

.....19.....

(TITLE)

AFFIDAVIT OF SERVICE

I,of the.....ofa designated
Provincial Officer under The Environmental Protection Act, 1971, make oath and say that I did about.....a.m./p.m.
onday theday of....., 19.....at.....
in the.....of.....serve.....
a true copy of this.....
by leaving it with.....
its.....

Sworn before me at the

.....of.....this
.....day of....., 19.....

Provincial Officer

A Commissioner, etc.

MINISTRY OF THE ENVIRONMENT

APPENDIX 3

SERVICE OF DOCUMENTS BY REGISTERED MAIL

The main problem with sending an Order by mail is proving it was sent and received by the company. Proof often involves several Ministry personnel, who often must examine their attendance records and notes. As an example of the kind of problem the Ministry can get into where registered mail is used the following example illustrates how involved proof of mailing can become:

1. The Director signs the document and gives it to his secretary.
2. The secretary prepares the document for mailing and gives it to the recording clerk.
3. The clerk places the envelope in the out-mail.
4. Mail staff pick up the mail and bring it to the mail room.

Although the mail room normally keeps a record of all registered mail, this item may be missed in some cases.

5. A Government Services driver picks up the mail and brings it to the post office.
6. At this point, we still have no proof of whether the document was sent.

Where "legal" letters or documents are sent by mail, the recommended procedure is that a the responsible staff person personally deliver the items to the post office.

In determining what procedures will best serve your overall purposes, ask the question!

Can I prove beyond reasonable doubt that the document was placed in the mail and received by the company?

Whenever personal service of a legal document is not possible the use of the mail is necessary. Please note that "REGISTERED" mail is REQUIRED. Registered implies being able to prove delivery. Delivery is proven by preparing an "Acknowledgment of Receipt" card at the time of registering the document at the Post Office. (sample attached). Upon delivery the person receiving the document must sign for it. The signed delivery card is then returned to the sender as proof of receipt.

When mailing legal documents type on the envelope "IF NOT DELIVERED WITHIN 15 DAYS RETURN TO (your office)".

To be assured that proof of mailing can be accomplished the Ministry official in charge of the file should PERSONALLY register and mail the documents at the Post Office. In sensitive cases where proof of delivery is thought to be an issue an "Affidavit of Services" can be prepared and sworn before a Commissioner for Oaths. Legal Services Branch or regional staff involved in coordinating legal matter can offer guidance in this regard.

	Canada Post	Postes Canada	<table border="1"> <tr> <td>On Postal Service</td> <td>Service des postes</td> </tr> </table>	On Postal Service	Service des postes
On Postal Service	Service des postes				
Acknowledgement of Receipt	Avis de réception				
Return to (Please print Name of Sender, P.O. Box, R.R. or Apt. No., No. and Street, City, Province, Postal Code)		Retournez à (En majuscules s.v.p. nom de l'expéditeur, Case postale, n. de R.R. ou d'app. n. et rue, Ville, Province, Code postal)			

• KLEEN STIK PRODUCTS • MAIL
 TAPE • ENLEVEZ LE PROTECTEUR ET PRESSEZ
 PRESS IN PLACE • D'TRANSFER • TAPE

Letter prepared at Office of Origin		A l'endroit d'origine Bureau d'origine		Please Print En majuscules s.v.p.	
Post Office of Mailing		Bureau d'expédition		Date	
Name of Addressee		Nom du destinataire			
P.O. Box, R.R. or Apt. No., No. and Street		C.p., n. de R.R. ou d'app. n. et rue			
City	Ville	Province	Country	Pays	Postal CODE postal
Office of Destination The addressee should be signed by the addressee or his authorized representative or, if the regulations of the country of destination provide, by the postmaster at the office of delivery and returned by first mail to the address shown on the other side.		Bureau destinataire Cet avis doit être signé par le destinataire ou son représentant ou, si le règlement du pays de destination le comporte, par l'agent du bureau de destination et renvoyé par le premier courrier à l'adresse indiquée au recto.		Date Stamp of Office of Delivery Timbre à date du bureau de destination	
The above mentioned item was delivered on		L'envoi recommandé susmentionné a été dûment livré le		19	
Signature of Postmaster at Office of Delivery	Signature de l'agent du bureau de destination	Signature of Addressee or his Authorized Representative	Signature du destinataire ou de son représentant		

APPENDIX 4

Guidelines for an Economic Analysis of
Private Sector Pollution Abatement and
Environmental Protection Measures

Policy: 02-01-01

M.O.E. Policy Manual

POLICY TITLE	GUIDELINES FOR AN ECONOMIC ANALYSIS OF PRIVATE SECTOR POLLUTION ABATEMENT AND ENVIRONMENTAL PROTECTION MEASURES	NO. 02-01-01						
<u>Legislative Authority</u> the Environmental Protection Act, Section 3 the Ontario Water Resources Act, Section 7								
<u>Statement of Principles</u> This policy describes the purpose and content of economic and financial analyses and indicates the conditions of their application to Private Sector pollution abatement and environmental protection activities, as required in Section 1 of Policy 05-02. <u>Definitions</u> <table border="0"> <tr> <td data-bbox="294 987 424 1055"><u>Economic Analysis</u></td> <td data-bbox="644 987 1459 1245">The application of principles of economics for identifying and evaluating the consequences of particular courses of action or changes in policy. In this type of analysis, the quantitative magnitudes of the relevant consequences are estimated and the incidence or distribution of these consequences among different groups, economic sectors and/or regions is determined.</td> </tr> <tr> <td data-bbox="294 1312 424 1379"><u>Financial Analysis</u></td> <td data-bbox="644 1312 1459 1402">A limited type of economic analysis which is restricted to the identification and evaluation of those consequences that can be valued in dollars.</td> </tr> <tr> <td data-bbox="294 1435 362 1469"><u>Firm</u></td> <td data-bbox="644 1435 1459 1559">A corporation, partnership or individual that is subject to the Ministry's pollution abatement program requirements as stipulated in Policy 05-02.</td> </tr> </table> <div data-bbox="1041 1827 1298 1861" style="text-align: right;">January 16, 1984</div>			<u>Economic Analysis</u>	The application of principles of economics for identifying and evaluating the consequences of particular courses of action or changes in policy. In this type of analysis, the quantitative magnitudes of the relevant consequences are estimated and the incidence or distribution of these consequences among different groups, economic sectors and/or regions is determined.	<u>Financial Analysis</u>	A limited type of economic analysis which is restricted to the identification and evaluation of those consequences that can be valued in dollars.	<u>Firm</u>	A corporation, partnership or individual that is subject to the Ministry's pollution abatement program requirements as stipulated in Policy 05-02.
<u>Economic Analysis</u>	The application of principles of economics for identifying and evaluating the consequences of particular courses of action or changes in policy. In this type of analysis, the quantitative magnitudes of the relevant consequences are estimated and the incidence or distribution of these consequences among different groups, economic sectors and/or regions is determined.							
<u>Financial Analysis</u>	A limited type of economic analysis which is restricted to the identification and evaluation of those consequences that can be valued in dollars.							
<u>Firm</u>	A corporation, partnership or individual that is subject to the Ministry's pollution abatement program requirements as stipulated in Policy 05-02.							
<u>Point of Contact</u> Director, Policy and Planning Branch								
<u>Effective Date</u> September 7, 1983								

02-01-02

1. Objective

The purpose of economic and financial analyses is to provide information that can be used in making decisions about pollution abatement actions and environmental protection efforts.

2. Scope

2.1 MOE Abatement Action

An economic or financial analysis may be required as part of the development of a Ministerial Control Order, Regulation or abatement action:

- (a) to identify the financial and other resources that are required to comply with the proposed action; and
- (b) to identify the magnitude and distribution of the economic and social consequences of compliance with the action.

2.2 Financial Hardship

An economic or financial analysis may be required to verify claims by a firm or other agencies that a Ministerial Control Order, Regulation or abatement action will cause unemployment or undue financial hardship.

3. Required Information

3.1 Economic Analysis

The following information is required for an economic analysis:

- (a) estimates of the physical requirements (capital and labour) and their financial value at various levels of abatement or degrees of environmental protection, as well as any cost reductions or revenues generated;

January 16, 1984

02-01-03

- (b) the impact on profit, cash flow and other indicators of a firm's performance;
- (c) non-financial consequences of the abatement action including lay-offs, reduced or increased output or production;
- (d) quantitative estimates of the environmental and social gains or losses resulting from the proposed action.

3.2 Financial Analysis

Information described under 3.1(a), (b) and (c) above is required for a financial analysis.

4. Responsibilities

4.1 MOE

Economic analyses will be instituted by a Regional or Branch Director of the Ministry of the Environment and will be undertaken by Policy and Planning Branch staff, or by consultants under their direction, with assistance from Regional staff.

4.2 Firm

Economic and financial analyses may be required to assist Ministry staff to decide on appropriate abatement or environmental protection actions, or to justify such actions.

5. Implementation

Economic and financial analyses will be required for abatement efforts and Ministerial Orders when one of the following conditions exist:

- (a) the firm at which the abatement effort is directed claims that compliance will cause employee lay-offs, business closure, reduced ability to compete, or an excessive financial burden with respect to investment funds or operating expenditures;

January 16, 1984

02-01-04

- (b) other interested parties claim that compliance will cause other undesirable social or economic dislocations (For example, see Policy No.15-02 - SURFACE WATER QUALITY MANAGEMENT - Deviations from Policy Two, Section 2.1);

5.1 Procedure

Under conditions 5(a) and (b) above, a financial analysis will be required to determine the financial effects of abatement costs of any undertaking. A more extensive economic study will be required if a financial study is inconclusive or indicates financial hardships or where compliance likely will result in lay-offs or other undesirable social and/or economic dislocations.

5.2 Relevant Documentation

Firms or other parties who claim effects of the kind described under 5 (a) and (b) are required within thirty days to submit information as per Section 3.1 above to substantiate their claims to the Regional Director. Information regarding abatement costs at various level of abatement, production levels, and financial data will be necessary to verify such claims.

5.3 Failure to Provide Documentation

Failure to provide documentation will be interpreted to mean that the abatement action has no significant adverse effects on the party in question.

January 16, 1984



Ontario

MINISTRY OF THE ENVIRONMENT

CONTROL ORDER

TO:

The report of JOHN DOE, Provincial Officer, made under section 126 of the Environmental Protection Act (called the "Act" in this Control Order) respecting the ARTIC PAPER LIMITED located at Lot 4, Concession V, in the Township of Dryden in the District of Cedar Falls in the Province of Ontario (called the "mill" in this Control Order) was filed with the Ministry on May 1, 1983. The report contains findings that contaminants discharged by you from this mill into the natural environment contravene section 13 of the Act. You are the owner and operator of this mill and, therefore, are the person responsible within the meaning of the Act for the discharge of contaminants from this mill into the natural environment.

Notice of my intention to issue this Control Order, written Reasons therefore, and a copy of the report of JOHN DOE, Provincial Officer, made under section 126 of the Act upon which the reasons are based, were served upon you on July 5, 1983. Written submissions were received from you on July 10, 1983 which I have duly considered and taken into account in issuing this Control Order.

Therefore, pursuant to the authority vested in me by section 6 of the Environmental Protection Act, I hereby order you to do the following:

Section 1:

Section 2:

Section 3 (b) By January 1, 1984, install and thereafter operate at all times a dual media filtration system designed to:

- i) reduce the load of phenolic compounds to 1364 kilograms (3,000 pounds) per day or less; and
- ii) reduce total suspended solids discharges to 6,136 kilograms (13,500 pounds) per day or less, or to a concentration of 15 milligrams per litre.

in the effluent being discharged to the Puresprings River at the Treatment Basin.

Section 4:

Issued: May 10, 1983



Ontario

MINISTRY OF THE ENVIRONMENT

CONTROL ORDER

#1

TO:

On May 10, 1983 a Control Order was issued to you respecting the discharges of contaminants from your pulp mill located at Lot 4, Concession V, in the Township of Dryden, in the District of Cedar Falls in the Province of Ontario (called the "mill" in this order). You are the owner and operator of this mill and, therefore, are the person responsible within the meaning of the Act for the discharge of contaminants from this mill into the natural environment.

The reason for this Amending Control Order is that by letter dated July 10, 1983 you have stated that Section 3 (b) could not be complied with due to equipment delivery delays. These delays were subsequently confirmed by my staff and a Public Meeting held July 25, 1983.

Therefore, pursuant to the authority vested in me by section 115 of the Environmental Protection Act, I hereby order that the said Control Order issued upon you May 10, 1982, be amended as follows:

Section 3(b) is revoked and the following is substituted:

By March 31, 1984, install and thereafter operate at all times a dual media filtration system designed to:

- i) reduce the load of phenolic compounds to 1364 kilograms (3,000 pounds) per day or less; and
- ii) reduce total suspended solids discharges to 6,136 kilograms (13,500 pounds) per day or less, or to a concentration of 15 milligrams per litre.

in the effluent being discharged to the Puresprings River from the Treatment Basin

Issued: August 30, 1983

On May 10, 1983 a Control Order was issued to you respecting the discharges of contaminants from your pulp mill located at Lot 4, Concession V, in the Township of Dryden, in the District of Cedar Falls in the Province of Ontario (called the "mill" in this order). You are the owner and operator of this mill and, therefore, are the person responsible within the meaning of the Act for the discharge of contaminants from this mill into the natural environment.

The reason for this Amending Control Order is that by letter dated July 10, 1983 you have stated that Section 3 (b) could not be complied with due to equipment delivery delays. These delays were subsequently confirmed by my staff and a Public Meeting held July 25, 1983.

Therefore, pursuant to the authority vested in me by section 115 of the Environmental Protection Act, I hereby order that the said Control Order issued upon you May 10, 1982, be amended as follows:

Section 3(b) is revoked and the following is substituted:

By March 31, 1984, install and thereafter operate at all times a dual media filtration system designed to:

- i) reduce the load of phenolic compounds to 1364 kilograms (3,000 pounds) per day or less; and
- ii) reduce total suspended solids discharges to 6,136 kilograms (13,500 pounds) per day or less, or to a concentration of 15 milligrams per litre.

in the effluent being discharged to the Puresprings River from the Treatment Basin

Issued: August 30, 1983



Ontario

MINISTRY OF THE ENVIRONMENT

CONTROL ORDER

TO: #2

Note: This edition is prepared for the purposes of convenience only, and for an accurate reference to this order recourse should be had to the original documents on file with the Ministry of the Environment

The report of JOHN DOE, Provincial Officer, made under section 126 of the Environmental Protection Act (called the "Act" in this Control Order) respecting the ARCTIC PAPER LIMITED PULP MILL located at Lot 4, Concession V, in the Township of Dryden in the District of Cedar Falls in the Province of Ontario (called the "mill" in this Control Order) was filed with the Ministry on June 1, 1983. The report contains findings that contaminants discharged by you from this mill into the natural environment contravene section 13 of the Act. You are the owner and operator of this mill and, therefore, are the person responsible within the meaning of the Act for the discharge of contaminants from this mill into the natural environment.

Notice of my intention to issue this Control Order, written reasons therefore, and a copy of the report of JOHN DOE, Provincial Officer, made under section 126 of the Act upon which the reasons are based, were served upon you on July 5, 1983. Written submissions were received from you on July 10, 1983 which I have duly considered and taken into account in issuing this Control Order.

Issued May 10/83 Section 1:

" " Section 2:

Amended Section 3(b) March 31, 1984 intall and thereaf
August 30/83 operate at all times a dual me
filtration system designed to:

" i) reduce the load of phenolic
compounds to 1354 kilograms
(3,000 pounds) per day or less;
and

ii) reduce total suspended solids
discharges to 6,136 kilograms
(13,500 pounds) per day or less,
or to a concentration of 15
milligrams per litre.

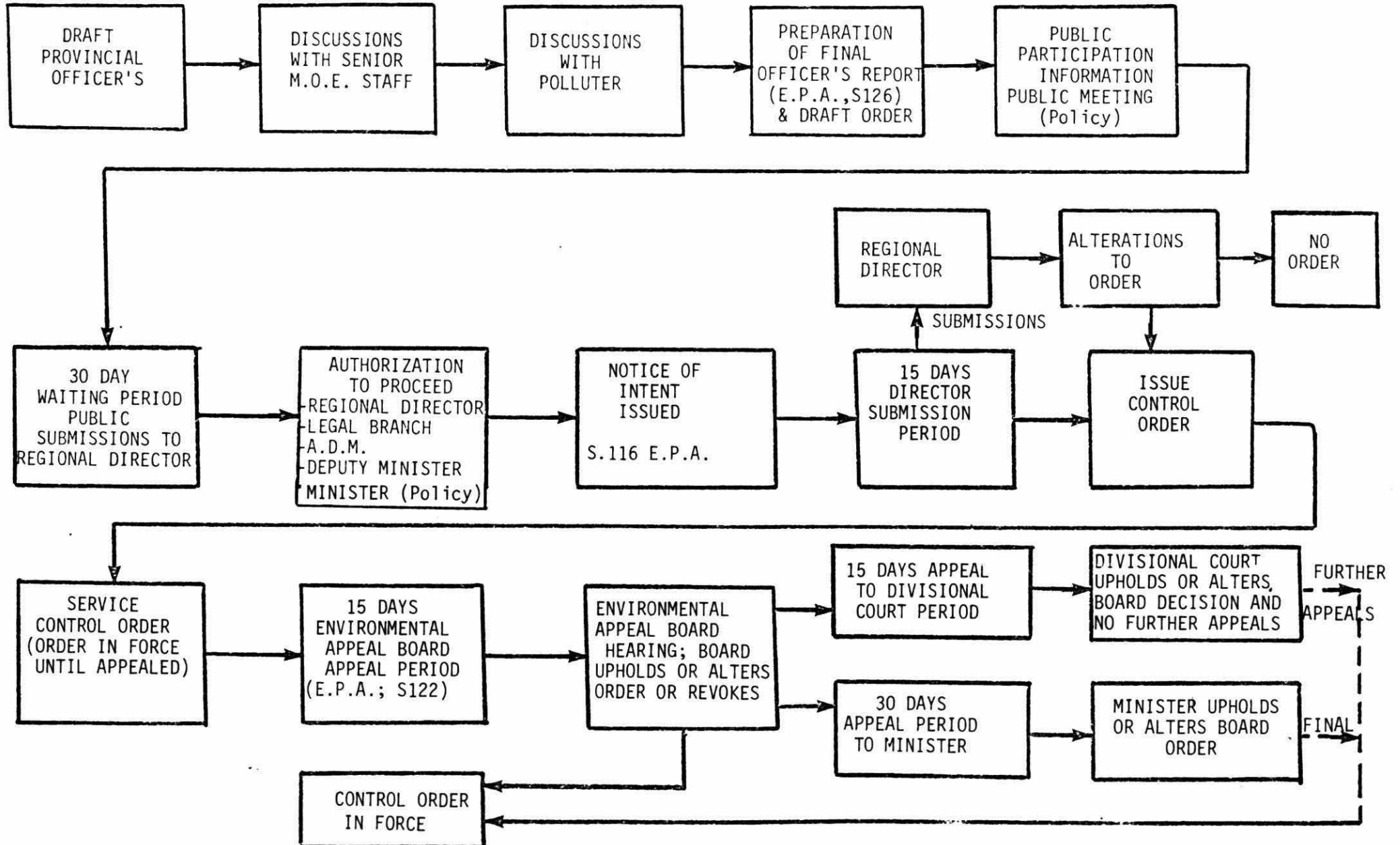
in the effluent being discharged to
the Puresprings River from the
Treatment Basin.

Revoked June 4/83 Section 4:

Section 5:

FIGURE 1

ADMINISTRATIVE PROCESS-CONTROL ORDERS



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